United Nations A/64/761–S/2010/218

General Assembly
Security Council

Distr.: General
29 April 2010

Original: English

General Assembly
Sixty-fourth session
Agenda items 16 and 32

Question of Palestine

Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories

Security Council
Sixty-fifth year

Letter dated 28 April 2010 from the Permanent Representative of Kuwait to the United Nations addressed to the Secretary-General

I am compelled, on behalf of the member States of the Arab Group, to convey to you our serious concerns regarding the illegal practices and measures being undertaken by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem. In addition to the grave situation being caused by Israel's unlawful colonial settlement campaign, especially in and around Occupied East Jerusalem, and the continuing illegal blockade of the Gaza Strip, I must draw your attention to the military order enacted on 13 April 2010 by Israel, by which it has granted itself the power to arbitrarily detain, imprison and deport Palestinian civilians who are deemed by the occupying Power to be so-called "infiltrators", allegedly "residing illegally" in the West Bank, including East Jerusalem.

As was officially brought to your attention by the Permanent Observer of Palestine to the United Nations in letters conveyed on 12 and 16 April 2010, respectively (A/ES-10/487-S/2010/185 and A/ES-10/488-S/2010/190), this Israeli military order (so-called military order 1650) is sweeping and arbitrary and could result in the deportation of tens of thousands of Palestinian civilians, including men, women and children, from the West Bank. Thousands of Palestinians, regardless of their Palestinian nationality, citizenship and residence, in particular civilians bearing Gaza Strip identification, Jerusalemites, Palestinians living in areas now trapped between the illegal annexation Wall and the 1967 border and others are at risk of being labelled "infiltrators" and of being forcibly expelled or deported by the Israeli occupying forces.

The member States of the Arab Group unequivocally condemn this illegal and inhumane Israeli measure and warn against the dangers of its implementation by the occupying Power. Carrying out such an illegal measure would impose grave

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suffering on thousands of Palestinian families and would further fuel tensions and destabilize the fragile situation on the ground at this very critical juncture in the area and throughout the region.

In this regard, it must be recalled that article 49 of the Fourth Geneva Convention prohibits the occupying Power from transferring or deporting civilians from the occupied territory, whether it be individual or mass transfers or deportations, regardless of the motive. Moreover, unlawful deportation or transfer is considered to be a grave breach of the Convention — a war crime — under article 147 as well as under article 85 (4) (a) of Additional Protocol I to the Geneva Conventions. Further, it is imperative to recall that the Security Council has adopted 10 resolutions specifically on the issue of Israel's deportation of Palestinian civilians from the Occupied Palestinian Territory, including East Jerusalem. All of those resolutions consistently and explicitly reaffirmed the applicability of the Fourth Geneva Convention to the Palestinian Territory occupied by Israel since 1967, including East Jerusalem; deplored or condemned the deportation by Israel, the occupying Power, of Palestinian civilians; and called upon Israel to rescind such measures, to ensure the safe and immediate return of those civilians deported and to desist forthwith from deporting any other Palestinian civilians. A comprehensive background paper on the matter of the deportation by Israel of Palestinian civilians and the relevant Security Council resolutions and applicable provisions of international humanitarian and human rights law has been prepared and is being transmitted herewith to you for your consideration (see annex).

In closing, as noted during the statement delivered by the State of Kuwait on behalf of the Arab Group during the recent Security Council debate on the situation in the Middle East, including the Palestinian question, which was held on 14 April 2010, I wish to reiterate that Israel's illegal practices in the Occupied Palestinian Territory reveal the height of impunity and hypocrisy by the occupying Power, which, as illustrated by the recent military order and other colonization practices, is clearly seeking to displace and expel more Palestinian civilians from their own homeland, while at the same time transferring more and more Israeli settlers to the West Bank, particularly to settlements in and around East Jerusalem, in grave breach of international humanitarian law, all blatantly before the eyes of the international community and in flagrant defiance of the will of the international community, as expressed in countless resolutions and statements.

We urge you to give this matter your urgent attention. Israel, the occupying Power, must be compelled to rescind this provocative and illegal military order and to cease immediately all of its illegal policies and practices in the Occupied Palestinian Territory, including East Jerusalem, in compliance with international law, including humanitarian and human rights law, and with the relevant Security Council and General Assembly resolutions. Israel must stop acting as a State above the law and prove that it is a genuine partner in the peace process and that it respects its commitment to the two-State solution for a just, comprehensive and peaceful settlement of the Israeli-Palestinian conflict and, ultimately, the Arab-Israeli conflict as a whole.

I should be grateful if you would have the text of the present letter and its annex distributed as a document of the General Assembly, under agenda items 16 and 32, and of the Security Council.

(*Signed*) Mansour Ayyad SH A **Alotaibi**
Chair of the Arab Group
Ambassador, Permanent Representative
of the State of Kuwait to the United Nations

Annex to the letter dated 28 April 2010 from the Permanent Representative of Kuwait to the United Nations addressed to the Secretary-General

Background paper dated 23 April 2010, prepared by the Permanent Observer Mission of Palestine to the United Nations, on the recent Israeli military orders threatening the deportation of Palestinian civilians from the Occupied Palestinian Territory, including East Jerusalem

- On 12 April 2010 and again on 16 April 2010, the Permanent Observer of Palestine to the United Nations conveyed identical letters to the Secretary-General and the President of the Security Council alerting the membership about a provocative and illegal Israeli military order that threatens with deportation tens of thousands of Palestinian civilians from the Occupied Palestinian Territory, including East Jerusalem. The Permanent Observer called upon the international community, with the Security Council at its forefront, to act urgently to address this dangerous situation and to compel Israel to rescind its military order and refrain from the deportation of any Palestinian civilians and to cease all other illegal policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and to abide by all of its obligations under international law, including international humanitarian and human rights law. (The letters were followed by the issuance of a communiqué by the Coordinating Bureau of the Non-Aligned Movement and a statement by the Organization of the Islamic Conference strongly condemning the Israeli military order and calling for the international community to shoulder its responsibilities in this regard.)

- By this Israeli military order (so-called military order 1650), which came into effect on 13 April 2010, the occupying Power has granted itself, in flagrant and grave breach of international humanitarian law, the power to deport Palestinian civilians, including men, women and children, in the West Bank that are deemed by it to be allegedly "infiltrating" the Occupied Territory. The scope of the order is vast and arbitrary, potentially affecting any civilian considered not to be in possession of so-called "required permits" issued by Israel, the occupying Power, to reside in the West Bank, including in East Jerusalem.

- Thousands of Palestinians are threatened with being labelled by Israel as "residing illegally" in the West Bank, regardless of their Palestinian nationality, citizenship and residence, and would be subject to detention, imprisonment and forced expulsion by the occupying forces with no recourse or protection for their rights. Those who are potentially at greatest risk are Palestinians bearing Gaza Strip identification, Palestinian Jerusalemites and Palestinians living in the area now between the Wall and the 1967 border (the Green Line), as well as Palestinian expatriates and international aid and development workers, even if they entered the West Bank "legally", that is, with the approval of the occupying Power, which maintains control of all borders and crossings into and out of the Occupied Palestinian Territory.

- This latest Israeli military order threatens the very presence of the indigenous Palestinian population in their own homeland. Such an order, along with other

illegal Israeli measures, including, inter alia, the ongoing settlement and Wall construction, the confiscation of land, the demolition of homes, evictions, residency permit revocations and the closure of areas as so-called "military zones", is clearly yet another attempt by the occupying Power to illegally alter the demographic composition, status and Palestinian Arab nature and character of the Occupied Palestinian Territory, including East Jerusalem. If implemented, such a measure would result in the displacement and deportation of Palestinian civilians from their homes in the Occupied Palestinian Territory and thus constitutes yet another component of Israel's policy of ethnic cleansing of the Palestinian people, a policy that has been continuously pursued by the various measures and practices mentioned above since the occupation began in 1967, in violation of the relevant Security Council resolutions and in grave breach of the Fourth Geneva Convention and other relevant provisions of international law.

Security Council resolutions

- The Security Council has adopted 10 resolutions specifically on the issue of deportations perpetrated by Israel, the occupying Power, against Palestinian civilians from the Occupied Palestinian Territory, including East Jerusalem.

- These Security Council resolutions are clear, focused and strong, and all of them, among other provisions, reaffirm the applicability of the Fourth Geneva Convention to the Palestinian Territory occupied by Israel since 1967, including East Jerusalem; deeply regret, deplore and condemn the deportation by Israel, the occupying Power, of Palestinian civilians from the Occupied Palestinian Territory (resolutions 468 (1980), 469 (1980) and 484 (1980) specifically concern the deportation of the Mayors of Al-Khalil (Hebron) and Halhoul and the Sharia Judge of Al-Khalil (Hebron)); call upon Israel to rescind the orders to deport Palestinian civilians; and call upon Israel to ensure the safe and immediate return to the Occupied Territory of those already deported and to desist forthwith from deporting any other Palestinian civilians.

- The resolutions include the following:

  1. 468 (1980)
  2. 469 (1980)
  3. 484 (1980)
  4. 607 (1988)
  5. 608 (1988)
  6. 636 (1989)
  7. 641 (1989)
  8. 694 (1991)
  9. 726 (1992)
  10. 799 (1992)

- The last Security Council resolution in this regard, resolution 799 (1992), was unanimously adopted following the deportation by Israel, the occupying Power, of 418 Palestinian civilians from the Occupied Palestinian Territory on 17 December 1992. This act of mass deportation also constituted a blatant act of collective punishment. The deported civilians included a 16-year-old boy as well as several elderly and ailing Palestinian men, some of whom the occupying Power claimed it had "mistakenly deported". The majority of the

deported were taken by buses, while some were flown by helicopter, across the so-called security zone in southern Lebanon and were dumped there in a mountainous area (Marj al-Zahour) in freezing winter weather. The Israeli occupying forces refused to allow relief agencies and aid convoys to reach the deportees and also shelled the area sporadically to prevent nearby villages from providing the deportees with food and other supplies and also to prevent the deportees from crossing back across the border on foot, which some of the deportees had attempted to do.

- By resolution 799 (1992), the Security Council, inter alia, strongly condemned the action taken by Israel, the occupying Power, to deport hundreds of Palestinian civilians and expressed its firm opposition to any such deportation by Israel; reaffirmed the applicability of the Fourth Geneva Convention to all the Palestinian territories occupied by Israel since 1967, including Jerusalem, and affirmed that deportation of civilians constitutes a contravention of obligations under the Convention; reaffirmed the independence, sovereignty and territorial integrity of Lebanon; demanded that Israel ensure the safe and immediate return to the occupied territories of all those deported; and requested the Secretary-General to consider dispatching a representative to the area to follow up with the Israeli Government with regard to this serious situation and to report to the Security Council.

- Security Council resolution 799 (1992) and all other previous Council resolutions regarding Israel's deportation of Palestinian civilians have been extremely important and central in addressing this illegal practice by the occupying Power and in ensuring the return of the majority of the deportees to their homes and families in the Occupied Palestinian Territory.

- In addition to the above-mentioned Security Council resolutions, the General Assembly and other United Nations organs have adopted numerous resolutions deploring Israel's deportation of Palestinian civilians and calling for the return of the deportees, the cessation by the occupying Power of this illegal practice and abidance with international law, including international humanitarian and human rights law.

International humanitarian law

Fourth Geneva Convention

- The Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (the Fourth Geneva Convention) is the primary body of international humanitarian law governing situations of armed conflict, including in particular situations of military occupation, with the provisions of the Convention aimed at ensuring the protection and the rights of the civilian population in such circumstances.

- As reaffirmed in at least 27 Security Council resolutions, countless General Assembly, Economic and Social Council and Human Rights Council resolutions, and by the 9 July 2004 advisory opinion of the International Court of Justice, the Fourth Geneva Convention is applicable to the Occupied Palestinian Territory, including East Jerusalem. Israel, the occupying Power, is thus obligated to respect the provisions of the Convention in the Occupied Palestinian Territory, including East Jerusalem. Moreover, in accordance with

article 1 common to the Geneva Conventions, the High Contracting Parties are obligated to respect and to ensure respect for the Convention in all circumstances.

- Article 49 states: "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive."

According to the authoritative commentary by the International Committee of the Red Cross on the Convention, this prohibition is "absolute and allows of no exceptions".

Significantly, article 49 also stipulates that the occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies. This article is thus aimed at protecting civilians under occupation from deportation as well as prohibiting the occupying Power from settling or colonizing the Occupied Territory with its own civilian population.

- Article 47 states: "Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as a result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory."

- Article 147 considers, inter alia, that "unlawful deportation or transfer or unlawful confinement of a protected person" constitutes a grave breach of the Convention.

- In sum, in accordance with the relevant provisions of the Fourth Geneva Convention, deportation by the occupying Power is not only illegal but also constitutes a grave breach of the Convention, that is, war crimes. In this regard, it is also relevant to recall that the 1945 Charter of the International Military Tribunal at Nuremberg defined deportation as a war crime and a crime against humanity.

Additional Protocol I to the Geneva Conventions

- Article 85 (4) (a) stipulates that: "In addition to the grave breaches defined in the preceding paragraphs and in the Conventions, the following shall be regarded as grave breaches of this Protocol, when committed wilfully and in violation of the Conventions or the Protocol: (a) the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention;"

- Articles 50 and 51 of Additional Protocol I to the Geneva Conventions regarding the definition and protection of civilians and the civilian population in situations of armed conflict, including military occupation, are also applicable. Under these additional provisions of international humanitarian law, the obligation to at all times make the distinction between civilians and

combatants is further consolidated, and attempts or measures by the occupying Power to characterize civilians under occupation as so-called "infiltrators" or otherwise in order to take military action against them, including acts of deportation, are thus clearly forbidden.

Human rights law

- There are also several provisions of human rights law that are applicable to the matter of deportation. This includes provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which it has been established are applicable to the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem.

- Article 9 of the Universal Declaration of Human Rights stipulates that: "No one shall be subjected to arbitrary arrest, detention or exile." Moreover, article 13 of the Declaration stipulates that "(1) Everyone has the right to freedom of movement and residence within the borders of each State. (2) Everyone has the right to leave any country, including his own, and to return to his country." Article 15 of the Declaration provides that "(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."

- Additionally, article 12 of the International Covenant on Civil and Political Rights provides that: "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence."

- Various other provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights as well as of the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child are also relevant to the matter of deportations of civilians from the Occupied Territory insofar as they detrimentally affect the civilian population, including their rights to family, livelihood, education, health care, and so on.